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Judiciary Committee
Public Hearing

March 24, 2009

Testimony of Theresa C. Lantz, Commissioner, Department of Correction

Raised Bill No. 6709, An Act Concerning the Department of Correction

Good afternoon, Senator McDonald, Representative Lawlor and members of the Judiciary Committee. I am Theresa Lantz, Commissioner for the Department of Correction. I have submitted written testimony on a number of bills for your consideration and come before you this afternoon to speak in support of **Raised Bill No. 6709, An Act Concerning the Department of Correction.**

Raised Bill 6709 is the Department's legislative package and contains provisions to: prohibit disclosure of employee information to any inmate, make it a class D felony for an incarcerated inmate who knowingly conveys or possesses a wireless electronic communication device, make needed changes to the provisions concerning the inmate discharge savings account legislation enacted in 2007, authorize the release of inmates to the custody of the Bureau of Immigration and Customs Enforcement, require other public agencies to notify the agency when a request is made for information about a correctional facility, and allow an inmate to request to remain in a facility beyond the inmate's discharge date.

Section 1 of the bill gives explicit statutory authority to deny disclosing specific sensitive information regarding any current or former DOC employee to an inmate unless required by a court order. This language would provide essential statutory protection that would protect my staff from disclosure of personal information to inmates. The majority of the DOC's employees are classified as hazardous duty and have regular contact with the inmate population. They work with accused and sentenced offenders in correctional facilities and in the community. Even those employees who do not work directly with the offender population have exposure to and can be affected by those who are incarcerated through their work in facilities and by decisions they may make in the course of their employment.

The safety and security of staff and the facility are severely compromised when inmates have access to an employee's files – whether they are personnel, medical, disciplinary, affirmative action or security investigative files. Providing any information about an employee to an inmate undercuts the training that the DOC provides for all new and current employees not to divulge information about them or another employee to an inmate. For the DOC to be ordered to release such information to inmates places the Department in the untenable position of committing a violation of its own policy – something for which a staff person

would certainly be disciplined and more likely be suspended or terminated from state service. Personal information that I have described about staff can and is used to harass, manipulate and extort staff.

The Department is currently appealing four FOIC decisions in which it was ordered to release such documents to inmates. In the first case, *Taylor I* (2007),[1] the hearing officer recognized the danger in releasing the employee record and found the documents exempt under *C.G.S. §1-210(b)(18).*[2] He based his findings and decision on the testimony presented by Deputy Commissioner Murphy, a 26-year correctional professional with special expertise in gang management.

Despite the hearing officer's findings, the full Commission stripped the decision of these findings, did not acknowledge the Deputy Commissioner's testimony, stated no evidence was presented to support the Department's position and ordered the release of the requested records. The Superior Court sustained DOC's appeal of this order.

That same inmate brought another appeal requesting staff files (*Taylor II).*[3] In its final decision in this case the FOIC acknowledged that it lost the appeal of the first case (*Taylor I*). It nevertheless again ordered the release of staff files to the inmate. The FOIC maintained that its decision in *Taylor I* was correct and that, pending final resolution of *Taylor I* by the Appellate Court or Supreme Court, it was bound in *Taylor II* by the same standard of proof applied in the earlier decision. That case, too, is being appealed.

The FOIC's decision in *Taylor I* not only undermines Departmental policy and compromises safety and security within our state's correctional facilities, it ignored a prior Superior Court decision[4] that recognized the legislative intent of *C.G.S. Section 1-210(b)(18),* which gives me, as Commissioner of Correction, the authority to deny disclosure of records that I have "reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility..."

There continues to be requests from the inmate population for staff personnel and similar files. The arguments presented by the Department of Correction and the testimony and witnesses put forth by the Department remain the same in all subsequent cases. The outcome from the Freedom of Information Commission

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[1] *David Taylor v. Commissioner, State of Connecticut, Dept. of Corr.*, Docket #FIC 2006-502, (9/2/07)

[2] *C.G.S. 1-210(b)(18)* exempts "Records, the disclosure of which the Commissioner of Correction...has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction..."

[3] *David Taylor v. Commissioner, State of Connecticut, Dept. of Corr.*; *and State of Connecticut, Dept. of Corr.*, Docket #FIC 2008-029 (12/10/98)

[4] *Sylvia v. Department of Correction*, Docket # FIC 2008-382 (draft decision, final vote 3/25/09)

does not change. In order to continue to protect the safety of our community, staff and other inmates, we are calling upon the legislature to insure that inmates cannot obtain personal information of correctional staff.

Section 2 of the bill prohibits inmate possession of a wireless communication device and establishes possession as a class D felony. The current statute that prohibits the conveyance of devices, such as a cell phone or a camera phone into a correctional facility, is silent on the possession of such by an inmate. As devices and cell phones become smaller, they tend to be more easily conveyed and concealed in a correctional institution. Correctional systems across the country are being challenged with controlling these types of contraband. While many inmates are intent on serving their sentence, following the rules and obeying security regulations, there are those inmates that pose real security threats and continue to engage in criminal activity. Possessing an electronic communication device such as a cell phone gives inmates access to a private line of communication from which they can harass, threaten and intimidate their victims, engage in unlawful activities and even continue criminal enterprises. The penalty of a felony conviction serves as an additional judicial sanction to deter such behavior.

Sections 3 through 7 of the bill make changes that are needed to effectively implement the inmate discharge savings legislation passed in 2007. I want to thank you again for passing the legislation that allows the DOC to set aside up to 10 percent of all money credited to an inmate's account to establish a savings fund that would be available to the inmate upon release to aid in reentry to the community. Once the legislation passed and we began to work towards implementing its provisions, we recognized the need for some technical revisions and clarification. Our proposed changes generally keep the implementation of Discharge Savings consistent with the Cost of Incarceration provisions.

Section 8 prohibits the disclosure of records that identifies or could identify persons involved in a court ordered execution. Because this is a current litigation issue, I respectfully ask that you not consider it at this time.

Section 9 of the bill gives the commissioner authority to enter into a Memorandum of Agreement with the US Department of Immigration and Customs Enforcement (ICE) to release for deportation certain inmates serving sentences of two years or less after they have served 50% of their sentence. Offenders identified as illegal aliens scheduled for deportation would be able to voluntarily request to be deported after serving 50% of their sentence. This would result in cost savings to the state as the number of inmates that have sentences of two years or less with an ICE detainer on them fluctuates between 125 and 150 inmates.

Section 10 of the bill supports the safety and security of facility operations by requiring that a state agency notify the Department of Correction when any

person requests information under the Freedom of Information Act (FOIA) concerning a correctional facility. An example of why this is critical recently attracted the attention of the Department of Emergency Management and Homeland Security. The Department of Environmental Protection (DEP) has aerial views of much of Connecticut land and structures, including explicit views of the grounds and structures of our state correctional facilities. In 2008 an individual requested copies of these records from the DEP under FOIA in order to offer them for sale over the Internet. Ensuring that the Department has an opportunity to review the request and determine its impact on public safety and agency operations safety and security is critical.

Section 11 of the bill allows an inmate, at his or her request, to stay at a correctional facility beyond the inmate's end of sentence discharge date if a treatment program or healthcare institution to which the inmate is scheduled to be released to is not able to accept the inmate on the inmate's discharge date. I do not anticipate that this provision would be used frequently but it would be beneficial to have the statutory authority should there be a need. As you know, I must discharge an inmate by the effective maximum term date of sentence, regardless of the inmate needs. There is current statutory language that allows the inmate to request to remain confined for up to 90 days beyond this end of sentence date for continued participation in a department program for drug dependency, in a work or education release program or in a program operated by a state agency other than the DOC. I would like to expand this authority to allow an inmate to request to remain in a correctional facility while awaiting entry into a treatment program, healthcare institution or for a compelling reason related to rehabilitation or treatment.

I thank you for your consideration of our agency bill, and my staff and I are happy to respond to any questions that you may have.